

case before the learned Magistrate on the 9th of July, 1940, disclose an error in law in that the learned Magistrate sought to impose an unlawful requirement on the accused as a condition precedent to giving his consent to a composition of the alleged offence. In view of the proceedings in this case subsequent to those of the 9th of July and certain attempts which have been made to influence me by bringing quite irrelevant matters to my notice, I have had no easy task in deciding on the proper order to be made in the exercise of my revisionary powers. Upon one point at any rate it would seem that everyone is agreed, and that is that the learned Magistrate was fully justified in requiring the accused to apologise to the complainant in open Court as a condition precedent to giving his consent to a composition.

I am therefore setting aside the order of transfer, and remitting this case to the learned Magistrate with a direction that he give the accused another chance of making a complete and satisfactory apology to the complainant in his Court. Should the accused then offer what any reasonable man would describe as an adequate and satisfactory apology, the learned Magistrate should, in my opinion, consent to the composition because the one lawful condition precedent which he imposed will have been performed. Should no such complete and satisfactory apology be forthcoming, then there appears to be no way out but another order of transfer.

Whatever may be the eventual outcome I do venture to express a hope that the heat which this case appears to have engendered in certain quarters not often affected in that way will soon be dissipated.

Order of transfer set aside.

[APPELLATE ORIGINAL JURISDICTION]

TERRELL, Ag. C.J.

July 16, 1940.

SENG SAI KEE v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 57 of 1940]

Criminal Procedure Code—S. 173—An instance of improper charges.

An accused was charged with putting one Tan Kim Teck in fear of injury and also with committing theft of 12 lemonade bottles.

Held, that the two offences charged were not of the same kind and not connected in any way and the conviction was quashed.

APPEAL.

Appellant in person.

C. H. Koh (Ag. D.P.P.) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J.—The appellant was charged

- (1) with putting one Tan Kim Teck in fear of injury on the 25th May 1940, an offence punishable under section 385 of the Penal Code, and
- (2) with committing theft of 12 lemonade bottles on the same day on certain premises owned by one Abdul Razak.

Under section 173 of the Criminal Procedure Code every charge shall be tried separately except in the cases mentioned in sections 174, 175, 176 and 179. The two offences charged were not of the same kind and were not connected in any way, and the trial of the two offences simultaneously constitutes an illegality which cannot be cured.

Crown Counsel was unable to support the convictions and the appeal was accordingly allowed and the appellant discharged. There appeared to be no ground for interfering with the convictions or the sentences on the merits, and it is unfortunate that, owing to a disregard of provisions of the Criminal Procedure Code with which all Magistrates should be familiar, a dangerous criminal has got off.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

PEDLOW, J.

August 27, 1940.

VELLAMA v. ENG & CO. & ANOTHER.

[SINGAPORE SUIT No. 154 of 1940]

Collision between motor vehicles—Res ipsa loquitur.

When an accident takes place between two motor vehicles upon the road and the accident is such as in the ordinary course of things does not happen if those who had the management of the vehicles had taken proper care and when the motor vehicles are shown to be under the management of the defendants or their servants, the fact of the accident itself affords reasonable evidence in the absence of explanation by the defendants that the accident arose from want of care. *Liffen v. Watson*⁽¹⁾ and *Halliwell v. Venables*⁽²⁾ followed.

The plaintiff was a passenger in a motor bus which collided with a lorry. The plaintiff's arm was not inside the bus at the time and it appears that probably her arm was grasping or wrapped round one of the supports of the roof of the bus.

Held, that this did not amount to contributory negligence; and

Also held further, that the decisive cause of the accident was the driving of the two vehicles too close together as they passed each other and therefore even